S.B. Civil Writ Petition NO.1366/2005
Sukh Raj
vs
ADJ No.3, Jodhpur & Anr.

DATE OF ORDER : - 22.3.2005

HON'BLE MR. PRAKASH TATIA,J.

Mr.Sajjan Singh, for the petitioner.

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Heard learned counsel for the petitioner.

The petitioner is aggrieved against the order dated 29.1.2005 by which petitioner's application filed under Order 6 Rule 17 CPC was dismissed by the first appellate court.

According to learned counsel for the petitioner, the UIT, Jodhpur has covered the Nala and, therefore, the plaintiff shall have the approach from the side of Nala and, therefore, the plaintiff will be able to utilize his property more conveniently as the other accommodations are already available with the plaintiff. According to learned counsel for the petitioner, during the pendency of the appeal, a stone-platform of the appellant-defendant was demolished by the UIT, Jodhpur and this fact the petitioner wanted to place on record of the appellate court. According to learned counsel for the petitioner, the first appellate court committed serious illegality in observing that above fact will be

considered at the time of hearing of the appeal and first appellate court thereby failed to decide the relief as claimed by the petitioner in the application.

It appears from the facts that the petitioner wants to submit some subsequent development and first of availability of the facility due to the coverage of the Nala, the court observed that the above property, i.e., Nala is the property of the Municipal Board (of the UIT, Jodhpur according to learned counsel for the petitioner). Since the first appellate court observed that the fact of removal of stone-platform of the appellant will be considered by the appellate court at the time of hearing of the appeal, I do not find any illegality in the impugned order dated 29.1.2005 because of additional reason that it is none of the business of the defendant-petitioner to suggest the alternate way to the plaintiff.

Hence, the writ petition of the petitioner is dismissed.

(Prakash Tatia), J.

c.p.goyal/-